



# Office of Temporary and Disability Assistance

ANDREW M. CUOMO  
Governor

MICHAEL P. HEIN  
Commissioner

BARBARA C. GUINN  
Executive Deputy Commissioner

April 9, 2020

Mr. Kurt Messner  
Regional Administrator  
USDA, Food and Nutrition Service  
Northeast Regional Office  
10 Causeway Street  
Boston, MA 02222

Dear Mr. Messner:

Enclosed, please find New York State's waiver request, under demonstration project authority if necessary, to waive the student eligibility criteria under 7 CFR 273.5(a) and (b).

These waiver requests are necessary, amid the extraordinary circumstances and conditions precipitated by the COVID-19 public health emergency, to support the food security of households with college students who have had to return home and/or who can no longer meet one of the student eligibility exemptions described at 7 CFR 273.5(b), even with the "good cause" of the pandemic.

Sincerely,

**/s/JG 4/9/2020**

Jeffrey Gaskell  
Deputy Commissioner  
Employment and Income Support Programs

Enclosure

cc: Bonnie Brathwaite, USDA-FNS  
Alonso Rodriguez, USDA-FNS  
Kevin Pasquaretta, USDA-FNS  
Matt Henschel, USDA-FNS  
Barbara Guinn  
Tom Hedderman  
Wendy DeMarco  
Tracy Gatchell  
Tom Gosh  
Lisa Schweigert

## **Student Exemption Waiver Request**

1. **Type of request:** Initial request to temporarily waive, under demonstration project authority if necessary, certain student eligibility exemption requirements due to COVID-19, and to expand the definition of “students enrolled at least half-time.”
2. **Primary regulation citation(s):** 7 CFR 273.5(a), 7 CFR 273.5(b), 7 CFR 282.1
3. **State:** New York
4. **Region:** Northeast Region
5. **Regulatory requirements:** 7 CFR 273.5(a) states that students enrolled at least half-time at an institution of higher education are ineligible for Supplemental Nutrition Assistance Program (SNAP) benefits unless they meet an exemption. 7 CFR 273.5(b) lists the exemptions that allow eligibility for a student enrolled at least half-time at an institution of higher education.
6. **Proposed Alternative Procedures:** New York State is requesting that FNS grant a waiver temporarily adjusting its interpretation of the phrase “enrolled at least half-time at an institution of higher education” found at 7 CFR 273.5(a). Specifically, New York State is requesting that the definition of a student who is enrolled “at least half-time at an institution of higher education” be temporarily adjusted to include students who had been enrolled at institutions that have closed their campuses due to COVID-19. These closures have required students to return home. In some instances, students have moved from a traditional campus learning environment to on-line learning, while in other instances, these students have had classes reduced or cancelled. We are requesting this adjustment to the interpretation through August 2020.

Further, we are requesting permission to deem students as meeting the student eligibility exemption criteria of being employed for 20 hours a week, or meeting work study exemption criteria, etc., pursuant to 7 CFR 273.5(b), due to the almost complete inability of students enrolled more than half time to meet this exemption criteria during the COVID-19 national health emergency.

This exemption would be consistent with the provisions of the Families First Corona Virus Response Act, and with the national waiver provided by FNS to the states following its passage, allowing Able-Bodied Adults Without Dependents (ABAWDS) to continue to maintain eligibility because they are unable to work 80 hours per month, or otherwise engage in activities normally required to establish and maintain eligibility, during this national emergency.

7. **Justification for request:**

On March 7, 2020 Governor Cuomo declared a State disaster emergency to enable New York to more quickly and effectively contain the spread of COVID-19. As a result of the current public health emergency, several statewide measures have been instituted to reduce the spread of COVID-19, including the closure of schools, colleges, the closure of in-office personnel functions for non-essential businesses, and other measures. The

delivery of essential services continues, such as health care services and the critical delivery of SNAP benefits, public assistance, and a range of emergency assistance.

The COVID-19 pandemic has resulted in both a national and state emergency. To date, New York State and the surrounding New England and mid-Atlantic states where most New York college students go to school, have been among the states hardest hit by COVID-19. Colleges in all of these states have been closed and will not reopen before the end of the academic year. Dormitories and other student residences have been closed and, wherever possible, students have been sent home. In New York State, all colleges and universities have closed their campuses to non-essential individuals.

While students at these institutions are still generally considered, for purposes of tuition and matriculation, as more than half time students, verifying that fact has become increasingly difficult and confusing, both for the students, their families and the workers processing SNAP applications, recertifications, and case changes to add people to the household.

Students have been encouraged or forced to return home. They may have returned to a home that is currently receiving SNAP benefits or one that now needs SNAP benefits due a change in their economic circumstances. Having the burden of an additional member in the household adds pressure to an already precarious nutrition situation. Not being able to add the returned student to their SNAP case, or having their application denied because the student is considered ineligible under the student eligibility provisions, increases the burden on these already stressed households and greatly increases the likelihood that the incidence of food insecurity of these households will be unnecessarily increased due to the extra mouths to feed.

At the same time, as noted above, due to school and business closures, forced relocation, quarantining and isolation in response to the pandemic, students are no longer able to meet the exemptions that normally would permit them to establish and maintain eligibility as a student enrolled more than half time. This waiver request is warranted in recognition of both the needs of college students and the low-income home to which they are now returning, which will add to the household's economic strain. It is worth noting that these college students are not likely eligible to receive any financial relief from the federal stimulus payments.

To date, the FNS National Office has maintained that the Families First Act did not authorize USDA to waive SNAP eligibility requirements, and therefore, the student requirements may not be waived except under demonstration project authority.

If true, FNS should approve this individual state waiver, or a national waiver, based on the demonstration project authority conferred on the Secretary at 7 U.S.C. 2026. Historically and understandably, demonstration project authority has been narrowly construed. However, if ever there were a time and situation in which USDA should adopt a more expansive and flexible understanding of its demonstration project authority, it is in this time of national emergency and unprecedented national need. At this time, the requested expansion of the definition of a student "enrolled at least half time," and the waiver of the student eligibility exemption criteria at 7 CFR 275.5(b) both fulfill at least two (purposes I and II) of the permissible project criteria enumerated at 7 U.S.C. 2026(1)(B)(ii).

8. **Anticipated impact on households and State Agency operations:** Active households which contain currently ineligible students may become eligible, or eligible for higher benefit amounts. New households adjusting to their new economic and living circumstances are also expected to apply for SNAP benefits and may include students who have transitioned home due to directives issued by their higher learning establishments.
9. **Caseload information, including percent of caseload and description of population expected to be affected by this waiver:** The number of students enrolled more than half-time returning to current or newly-applying SNAP households is unknown.
10. **Time Period for which Waiver is needed:** Implementation through August 31, 2020.
11. **Proposed Quality Control Review Procedures:** No special procedures.
12. **Signature and Title of Requesting Official:**

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Jeffery Gaskell  
Deputy Commissioner  
New York State Office of Temporary and Disability Assistance

13. **Date of Request:** April 9, 2020